

Summary of Emergency Ocean Dumping Permit Provisions

What does the MPRSA say about emergency permits?

- The Marine Protection, Research, and Sanctuaries Act (MPRSA, 33 USC 1401, et seq.) regulates the transportation of material for the purpose of dumping into ocean waters (waters seaward of the baseline).
- EPA is authorized to issue permits for the dumping of material, other than dredged material, in ocean waters. MPRSA 1412(a) and (b). The Corps of Engineers issues permits for the ocean dumping of dredged material. MPRSA 1413.
- No permits (even emergency permits) may be issued for the ocean dumping of radiological, chemical, or biological warfare agents; high-level radioactive waste; medical waste; or sewage sludge (any solid, semisolid, or liquid waste generated by a wastewater treatment plant). MPRSA 1412(a) and 1414b(a)(1) and (2).
- While industrial waste (any solid, semisolid, or liquid waste generated by a manufacturing or processing plant) is generally prohibited from ocean dumping (MPRSA 1414b), emergency permits may be issued for industrial waste if EPA determines that there has been demonstrated to exist an emergency, requiring the dumping of such waste, which poses an unacceptable risk relating to human health and admits of no other feasible solution. MPRSA 1412a. “Emergency” refers to situations requiring action with a marked degree of urgency.
- No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. MPRSA 1415(h).

What do the ocean dumping regulations say about emergency permits?

- Under the ocean dumping regulations (40 CFR 220-229), emergency permits may be issued for any materials except those prohibited by 40 CFR 227.5¹ where there is demonstrated to exist an emergency requiring the dumping of such materials, which poses an unacceptable risk relating to human health and admits of no other feasible solution. 40 CFR 220.3(c).
- Emergency permits may be issued for materials listed in 40 CFR 227.6² when present as greater than trace contaminants only after consultation with State Department with respect to the need to consult with Parties to the London Convention that are likely to be affected by the dumping. 40 CFR 220.3(c). Whether material is present in trace amounts is determined by bioassays. 40 CFR 227.6(b) and (c). Emergency permits for other materials do not require consultation with State Department. 40 CFR 220.3(c).
- “Emergency” refers to situations requiring action with a marked degree of urgency, but is not limited in its application to circumstances requiring immediate action.
- No permit is required for ocean dumping of material from a vessel or aircraft in an emergency to safeguard life at sea. 40 CFR 220.1(c)(4).

¹ High-level radioactive wastes; materials produced or used for radiological, chemical or biological warfare; materials insufficiently described to permit application of the environmental impact criteria of 40 CFR 227 Subpart B; and persistent inert synthetic or natural materials which may float or remain in suspension in the ocean in such a manner that they may interfere materially with fishing, navigation, or other legitimate uses of the ocean.

² Organohalogen compounds; mercury and mercury compounds; cadmium and cadmium compounds; oil or any kind or in any form; known or suspected carcinogens, mutagens, or teratogens.

To whom is permitting authority delegated? (Delegation 1200 TN 103; copy below)

The authority to issue emergency permits has been delegated to the Assistant Administrator (AA) for Water and the Regional Administrators (RAs), with the following limitations:

- The AA for Water has authority for permitting where ocean dumping will occur at a site to be used by more than one Region and where the RA determines that the Region has insufficient technical expertise to assess the permit request.
- RAs are required to notify the AA for Water prior to issuance of a permit.

What information must be in the emergency permit application? (40 CFR 221.1)

Applications for emergency permits (and all other types of non-dredged material permits) must be in writing and contain basic information such as the name of the person or firm transporting the material; adequate physical and chemical description of the material, including the results of tests necessary to apply the ocean dumping criteria; quantity of material to be dumped; proposed dump site; proposed method of release; statement of the need for the proposed dumping; and an assessment of the anticipated environmental impact of the proposed dumping.

What Agency action are taken on emergency permit applications? (40 CFR 222)

- Decisions as to the issuance, denial, or imposition of conditions on emergency permits (and all other types of non-dredged material permits) will be made by application of the criteria of parts 227 and 228 (§ 222.1).
- A tentative determination as to whether the permit will be issued must be made and published (see §§ 222.2(b) and 222.3 for details) before the emergency permit is issued, EXCEPT that no notice or tentative determinations shall be required in any case in which EPA determines:
 - (1) that an emergency (as defined in § 220.3(c)) exists;
 - (2) that the emergency poses an unacceptable risk relating to human health;
 - (3) that the emergency admits of no other feasible solution; and
 - (4) that the public interest requires the issuance of an emergency permit as soon as possible.
- Under such circumstances, appropriate notice is still required as soon as practicable after the issuance of the emergency permit. § 222.3(b)(3).

How are dumping sites designated for emergency ocean dumping? (40 CFR 228.4(c))

Dumping sites for materials disposed under an emergency permit will be specified by EPA as a permit condition and will be based on an individual appraisal of the characteristics of the waste and the safest means for its disposal.

What information must be in the emergency permit? (40 CFR 223.1(a))

All emergency permits must be displayed on the vessel engaged in dumping and must include the following information: name of permittee; means of conveyance and methods and procedures for release of materials; port through or from which material will be transported; description of relevant physical and chemical properties of the material; quantity of the material expressed in tons; disposal site; times at which dumping may occur and effective date and expiration date of permit; special provisions deemed necessary for monitoring or

surveillance; monitoring relevant to assessment of environmental impact at disposal site deemed necessary or appropriate by EPA; any other terms and conditions.

What records must be kept by the permittee? (40 CFR 224.1)

Emergency permittees must maintain (and make available for inspection by EPA and USCG) complete records of the following information: physical and chemical characteristics of material; precise times and locations of dumping; any other information required as a condition of the permit.

What information must be reported by the permittee? (40 CFR 224.2)

- Information required to be recorded pursuant to 224.1 shall be reported to EPA within 30 days of the expiration of the permit if the permit duration is less than 6 months or within 30 days of each 6-month period following the effective date of the permit if the permit duration is greater than 6 months.
- If material is dumped without a permit (i.e., to safeguard life at sea), the owner or operator of the vessel or aircraft shall as soon as feasible inform EPA or the Coast Guard and shall within 10 days file a written report with EPA containing the information required under 224.1 and a description of the circumstances.

Delegation of Authority

DELEGATIONS MANUAL

1200 TN 103

7/25/84

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT

3-4. Research and Emergency Ocean Dumping Permits, Other Than Incineration-at-Sea Permits

1. AUTHORITY. To designate hearing and presiding officers for permit application hearings concerning research and emergency ocean dumping permits other than for the incineration of approved wastes at sea, and to issue or deny such permits, impose conditions, and take final action as a result of hearings on issuance/denial of permits and imposition of conditions pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA), Sections 102 and 104.

2. TO WHOM DELEGATED. Assistant Administrator for Water and Regional Administrators.

3. LIMITATIONS.

a. The Assistant Administrator for Water has authority for permitting where ocean dumping will occur at a site to be used by more than one Region and where the Regional Administrator determines that the Region has insufficient technical expertise to assess the permit request.

b. Regional Administrators are required to notify the Assistant Administrator for Water prior to issuance of a permit.

4. REDELEGATION AUTHORITY. This authority may not be redelegated.

5. ADDITIONAL REFERENCES. 40 CFR 220